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To amend title 49, United States Code, to authorize the Secretary of Transportation to implement a pilot program to improve access to the national transportation system for small communities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1998

Mr. FORD (for himself, Mr. ROCKEFELLER, Mr. DORGAN, Mr. HOLLINGS, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to authorize the Secretary of Transportation to implement a pilot program to improve access to the national transportation system for small communities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Air Service Restoration
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1 (1) a national transportation system providing
2 safe, high quality service to all areas of the United
3 States is essential to interstate commerce and the
4 economic well-being of cities and towns throughout
5 the United States;

6 (2) taxpayers throughout the United States
7 have supported and helped to fund the United
8 States aviation infrastructure and have a right to
9 expect that aviation services will be provided in an
10 equitable and fair manner to every region of the
11 country;

12 (3) some communities have not benefited from
13 airline deregulation and access to essential airports
14 and air services has been limited;

15 (4) air service to a number of small commu-
16 nities has suffered since deregulation;

17 (5) studies by the Department of Transpor-
18 tation have documented that, since the airline indus-
19 try was deregulated in 1978—

20 (A) 34 small communities have lost service
21 and many small communities have had jet air-
22 craft service replaced by turboprop aircraft
23 service;

24 (B) out of a total of 320 small commu-
25 nities, the number of small communities being

1 served by major air carriers declined from 213
2 in 1978 to 33 in 1995;

3 (C) the number of small communities re-
4 ceiving service to only one major hub airport in-
5 creased from 79 to 1978 to 134 in 1995; and

6 (D) the number of small communities re-
7 ceiving multiple-carrier service decreased from
8 136 in 1978 to 122 in 1995; and

9 (6) improving air service to small and medium-
10 sized communities that have not benefited from fare
11 reductions and improved service since deregulation
12 will likely entail a range of Federal, State, regional,
13 local, and private sector initiatives.

14 **SEC. 3. PURPOSE.**

15 The purpose of this Act is to facilitate, through a
16 pilot program, incentives and projects that will help com-
17 munities to improve their access to the essential airport
18 facilities of the national air transportation system through
19 public-private partnerships and to identify and establish
20 ways to overcome the unique policy, economic, geographic,
21 and marketplace factors that may inhibit the availability
22 of quality, affordable air service to small communities.

1 **SEC. 4. ESTABLISHMENT OF SMALL COMMUNITY AVIATION**
 2 **DEVELOPMENT.**

3 Section 102 of title 49, United States Code, is
 4 amended by adding at the end thereof the following:

5 “(g) SMALL COMMUNITY AIR SERVICE DEVELOP-
 6 MENT OFFICE.—

7 “(1) ESTABLISHMENT.—The Secretary shall es-
 8 tablish within the Department of Transportation an
 9 Office of Aviation Development. The Office shall be
 10 headed by a Director, designated by the Secretary.

11 “(2) FUNCTIONS.—The Director shall—

12 “(A) function as a facilitator between
 13 small communities and air carriers;

14 “(B) carry out section 41743 of this title;

15 “(C) carry out the airline service restora-
 16 tion program under subchapter III of chapter
 17 417 of this title;

18 “(D) ensure that the Bureau of Transpor-
 19 tation Statistics collects data on passenger in-
 20 formation to assess the service needs of small
 21 communities;

22 “(E) work with and coordinate efforts with
 23 other Federal, State, and local agencies to in-
 24 crease the viability of service to small commu-
 25 nities and the creation of aviation development
 26 zones; and

1 “(F) provide policy recommendations to
2 the Secretary and the Congress that will ensure
3 that small communities have access to quality,
4 affordable air transportation services.

5 “(3) REPORTS.—The Director shall provide an
6 annual report to the Secretary and the Congress be
7 ginning in 1999 that—

8 “(A) analyzes the availability of air trans-
9 portation services in small communities, includ-
10 ing, but not limited to, an assessment of the air
11 fares charged for air transportation services in
12 small communities compared to air fares
13 charged for air transportation services in larger
14 metropolitan areas and an assessment of the
15 levels of service, measured by types of aircraft
16 used, the availability of seats, and scheduling of
17 flights provided to small communities;

18 “(B) identifies the policy, economic, geo-
19 graphic and marketplace factors that inhibit the
20 availability of quality, affordable air transpor-
21 tation services to small communities; and

22 “(C) provides policy recommendations to
23 address the policy, economic, geographic, and
24 marketplace factors inhibiting the availability of

1 quality, affordable air transportation services to
2 small communities.”.

3 **SEC. 5. COMMUNITY-CARRIER AIR SERVICE PROGRAM.**

4 (a) IN GENERAL.—Subchapter II of title 49, United
5 States Code, is amended by adding at the end thereof the
6 following:

7 **“§ 41743. Air service program for small communities**

8 “(a) COMMUNITIES PROGRAM.—Under advisory
9 guidelines prescribed by the Secretary of Transportation,
10 a small community or a consortia of small communities
11 or a State may develop an assessment of its air service
12 requirements, in such form as the Director of the Office
13 of Aviation Development may require, and submit the as-
14 sessment and service proposal to the Office.

15 “(b) SELECTION OF PARTICIPANTS.—In selecting
16 community programs for participation in the communities
17 program under subsection (a), the Director shall apply cri-
18 teria, including geographical diversity and the presen-
19 tation of unique circumstances, that will demonstrate the
20 feasibility of the program.

21 “(c) CARRIERS PROGRAM.—The Director shall invite
22 part 121 air carriers and regional/commuter carriers (as
23 such terms are defined in section 41715(d) of this title)
24 to offer service proposals in response to, or in conjunction
25 with, community aircraft assessments submitted to the of-

1 fice under subsection (a). A service proposal under this
 2 paragraph shall include—

3 “(1) an assessment of potential daily passenger
 4 traffic, revenues, and costs necessary for the carrier
 5 to offer the service;

6 “(2) a forecast of the minimum percentage of
 7 that traffic the carrier would require the community
 8 to garner in order for the carrier to start up and
 9 maintain the service; and

10 “(3) the costs and benefits of providing jet serv-
 11 ice by regional or other jet aircraft.

12 “(d) OFFICE SUPPORT FUNCTION.—The Director
 13 shall work with small communities and air carriers, taking
 14 into account their proposals and needs, to facilitate the
 15 initiation of service. The Director—

16 “(1) may work with communities to develop in-
 17 novative means and incentives for the initiation of
 18 service;

19 “(2) may obligate funds available to carry out
 20 this subchapter to make up the difference between
 21 the carrier’s forecast and the community’s ability to
 22 generate the necessary percentage of traffic;

23 “(3) shall continue to work with both the car-
 24 riers and the communities to develop a combination

1 of community incentives and carrier service levels
2 that—

3 “(A) are acceptable to communities and
4 carriers; and

5 “(B) do not conflict with other Federal or
6 State programs to facilitate air transportation
7 to the communities;

8 “(4) may designate an airport in the program
9 as an Air Service Development Zone and work with
10 the community on means to attract business to the
11 area surrounding the airport, to develop land use op-
12 tions for the area, and provide data, working with
13 the Department of Commerce and other agencies;
14 and

15 “(5) may take such other action under sub-
16 chapter III of this chapter as may be appropriate.

17 “(e) LIMITATIONS.—

18 “(1) COMMUNITY SUPPORT.—The Director may
19 not provide financial assistance under subsection
20 (c)(2) to any community unless the Director deter-
21 mines that—

22 “(A) a public-private partnership exists at
23 the community level to carry out the commu-
24 nity’s proposal;

1 “(B) the community will make a substan-
 2 tial financial contribution that is appropriate
 3 for that community’s resources;

4 “(C) the community has established an
 5 open process for soliciting air service proposals;
 6 and

7 “(D) the community will accord similar
 8 benefits to air carriers that are similarly situ-
 9 ated.

10 “(2) AMOUNT.—The Director may not provide
 11 financial assistance under subsection (d)(2) to any
 12 community in excess of the lesser of—

13 “(A) up to 75 percent of the financial con-
 14 tribution made by the community; or

15 “(B) \$500,000 per year.

16 “(f) REPORT.—The Director shall report through the
 17 Secretary to the Congress annually on the progress made
 18 under this section during the preceding year in expanding
 19 commercial aviation service to smaller communities.”.

20 (b) CONFORMING AMENDMENT.—The chapter analy-
 21 sis for chapter 417 of such title is amended by inserting
 22 after the item relating to section 41742 the following:

 “41743. Air service program for small communities.”.

23 (c) WAIVER OF LOCAL CONTRIBUTION.—Section
 24 41736(b) of title 49, United States Code, is amended by
 25 inserting after paragraph (4) the following:

1 “Paragraph (4) does not apply to any community ap-
 2 proved for service under this section during the period be-
 3 ginning October 1, 1991, and ending December 31,
 4 1997.”.

5 **SEC. 6. AIRLINE SERVICE RESTORATION PILOT PROGRAM.**

6 (a) IN GENERAL.—Chapter 417 of title 49, United
 7 States Code, is amended by adding at the end thereof the
 8 following:

“SUBCHAPTER III—AIRLINE SERVICE RESTORATION

“41761. Pilot program project authority.

“41762. Assistance to communities for service.

“41763. Additional authority.

“41764. Air traffic control services pilot program.

9 **“§ 41761. Pilot program project authority**

10 “(a) IN GENERAL.—The Director of the Office of
 11 Aviation Development shall establish a pilot program—

12 “(1) to assist communities and States with in-
 13 adequate access to the national transportation sys-
 14 tem to improve their access to that system; and

15 “(2) to facilitate better link-ups to support the
 16 improved access.

17 “(b) PROJECT AUTHORITY.—Under the pilot pro-
 18 gram established pursuant to subsection (a), the Director
 19 may—

20 “(1) provide financial assistance by way of
 21 grants to small communities under section 41743;
 22 and

1 “(2) take such other action as may be appro-
2 priate.

3 “(c) OTHER ACTION.—Under the pilot program es-
4 tablished pursuant to subsection (a), the Director may fa-
5 cilitate service by—

6 “(1) working with airports and air carriers to
7 ensure that appropriate facilities are made available
8 at essential airports;

9 “(2) requiring interline or joint-fare agreements
10 between air carriers for domestic United States serv-
11 ice if necessary to facilitate access to essential facili-
12 ties for participants in the program subject to the
13 right of a carrier being required to enter into such
14 agreements to impose reasonable safety, service, and
15 other obligations on the potential partner;

16 “(3) collecting data on air carrier service to
17 small communities; and

18 “(4) providing policy recommendations to the
19 Secretary to stimulate air service and competition to
20 small communities.

21 **“§ 41762. Assistance to communities for service**

22 “(a) IN GENERAL.—Financial assistance provided
23 under section 41743 during any fiscal year as part of the
24 pilot program established under section 41761(a) shall be
25 implemented for not more than—

1 (1) 4 communities within any State at any
2 given time; and

3 (2) 40 communities in the entire program at
4 any time.

5 For purposes of this subsection, a consortium of commu-
6 nities shall be treated as a single community.

7 “(b) ELIGIBILITY.—In order to participate in a pilot
8 project under this subchapter, a State, community, or
9 group of communities shall apply to the Secretary in such
10 form and at such time, and shall supply such information,
11 as the Secretary may require, and shall demonstrate to
12 the satisfaction of the Secretary that—

13 “(1) the applicant has an identifiable need for
14 access, or improved access, to the national air trans-
15 portation system that would benefit the public;

16 “(2) the pilot project will provide material bene-
17 fits to a broad section of the travelling public, busi-
18 nesses, educational institutions, and other enter-
19 prises whose access to the national air transpor-
20 tation system is limited;

21 “(3) the pilot project will not impede competi-
22 tion; and

23 “(4) the applicant has established, or will estab-
24 lish, public-private partnerships in connection with
25 the pilot project to facilitate service to the public.

1 “(c) COORDINATION WITH SUBCHAPTER II.—The
 2 Secretary shall carry out this subchapter in such a manner
 3 as to complement action taken under subchapter II of this
 4 chapter. To the extent the Secretary determines to be ap-
 5 propriate, the Secretary may adopt criteria for implemen-
 6 tation of this subchapter that are the same as, or similar
 7 to, the criteria developed under subchapter II for deter-
 8 mining which airports are eligible under that subchapter.
 9 The Secretary shall also, to the extent possible, provide
 10 incentives where no direct, viable, and feasible alternative
 11 service exists, taking into account geographical diversity
 12 and appropriate market definitions.

13 “(d) MAXIMIZATION OF PARTICIPATION.—The Sec-
 14 retary shall structure the program established pursuant
 15 to section 41761(a) in a way designed to—

16 “(1) permit the participation of the maximum fea-
 17 sible number of communities and States over a 5-
 18 year period by limiting the number of years of par-
 19 ticipation or otherwise; and

20 “(2) obtain the greatest possible leverage from
 21 the financial resources available to the Secretary and
 22 the applicant by—

23 “(A) progressively decreasing, on a project-
 24 by-project basis, any Federal financial incen-

1 tives provided under this chapter over the 5-
2 year period; and

3 “(B) terminating as early as feasible Fed-
4 eral financial incentives for any project deter-
5 mined by the Secretary after its implementation
6 to be—

7 “(i) viable without further support
8 under this subchapter; or

9 “(ii) failing to meet the purposes of
10 this chapter or criteria established by the
11 Secretary under the pilot program.

12 “(e) SUCCESS BONUS.—If Federal financial incen-
13 tives to a community are terminated under subsection
14 (d)(2)(B) because of the success of the program in that
15 community, then that community may receive a one-time
16 incentive grant to ensure the continued success of that
17 program.

18 “(f) PROGRAM TO TERMINATE IN 5 YEARS.—No new
19 financial assistance may be provided under this sub-
20 chapter for any fiscal year beginning more than 5 years
21 after the date of enactment of the Air Service Restoration
22 Act.

23 **“§ 41763. Additional authority**

24 “In carrying out this chapter, the Secretary—

1 “(1) may provide assistance to States and com-
 2 munities in the design and application phase of any
 3 project under this chapter, and oversee the imple-
 4 mentation of any such project;

5 “(2) may assist States and communities in put-
 6 ting together projects under this chapter to utilize
 7 private sector resources, other Federal resources, or
 8 a combination of public and private resources;

9 “(3) may accord priority to service by jet air-
 10 craft;

11 “(4) take such action as may be necessary to
 12 ensure that financial resources, facilities, and admin-
 13 istrative arrangements made under this chapter are
 14 used to carry out the purposes of the Air Service
 15 Restoration Act; and

16 “(5) shall work with the Federal Aviation Ad-
 17 ministration on airport and air traffic control needs
 18 of communities in program.

19 **§ 41764. Air traffic control services pilot program**

20 “(a) IN GENERAL.—To further facilitate the use of,
 21 and improve the safety at, small airports, the Adminis-
 22 trator of the Federal Aviation Administration shall estab-
 23 lish a pilot program to contract for Level I air traffic con-
 24 trol at 20 facilities not eligible for participation in the
 25 Federal Contract Tower Program.

1 “(b) PROGRAM COMPONENTS.—In carrying out the
2 pilot program established under subsection (a), the Ad-
3 ministrator may—

4 “(1) utilize current, actual, site-specific data,
5 forecast estimates, or airport system plan data pro-
6 vided by a facility owner or operator;

7 “(2) take into consideration unique aviation
8 safety, weather, strategic national interest, disaster
9 relief, medical and other emergency management re-
10 lief services, status of regional airline service, and
11 related factors at the facility;

12 “(3) approve for participation any facility will-
13 ing to fund a pro rata share of the operating costs
14 used by the Federal Aviation Administration to cal-
15 culate, and, as necessary, a 1:1 benefit-to-cost ratio,
16 as required for eligibility under the Federal Contract
17 Tower Program; and

18 “(4) approve for participation any facility will-
19 ing to fund a pro rata share of construction used by
20 the Federal Aviation Administration to calculate,
21 and, as necessary, a 1:1 benefit-to-cost ratio, as re-
22 quired for eligibility under the Federal Contract
23 Tower Program.

24 “(c) REPORT.—One year before the pilot program es-
25 tablished under subsection (a) terminates, the Adminis-

1 trator shall report to the Congress on the effectiveness of
 2 the program, with particular emphasis on the safety and
 3 economic benefits provided to program participants and
 4 the national air transportation system.”.

5 (b) CLERICAL AMENDMENT.—The chapter analysis
 6 for chapter 417 of title 49, United States Code, is amend-
 7 ed by adding at the end thereof the following:

“SUBCHAPTER III—AIRLINE SERVICE RESTORATION

“41761. Pilot programs.

“41762. Financial assistance to States.

“41763. Additional authority.

“41764. Air traffic control services pilot program.”.

8 **SEC. 7. FUNDING AUTHORITY.**

9 (a) IN GENERAL.—The Secretary of Transportation
 10 may obligate not more than \$20,000,000 for each of fiscal
 11 years 1999 through 2002 to carry out subchapter III of
 12 chapter 417 of title 49, United States Code, out of funds
 13 otherwise available for aviation programs other than funds
 14 appropriated, obligated, or made available to carry out
 15 subchapter II of such chapter.

16 (b) SUCCESS BONUS.—If the Secretary determines
 17 that the program carried out under such subchapter III
 18 is successful in providing enhanced air carrier service to
 19 small communities, then the Secretary may obligate an ad-
 20 ditional amount, not in excess of \$5,000,000, for each of
 21 fiscal years 2001 and 2002 to carry out that subchapter
 22 out of such funds.

1 **SEC. 8. JOINT FARES AND INTERLINE AGREEMENTS.**

2 (a) IN GENERAL.—Subchapter I of chapter 417 of
3 title 49, United States Code, is amended by adding at the
4 end thereof the following:

5 **“§ 41716. Joint fares and interline agreements for do-**
6 **mestic transportation**

7 “(a) IN GENERAL.—In order to more effectively fa-
8 cilitate service to small communities, the Secretary of
9 Transportation may, if necessary, require an air carrier
10 that serves an essential airport facility in the United
11 States and an air carrier that offers service in an under-
12 served market within the United States to enter into an
13 agreement with a qualifying air carrier that files a request
14 with the Secretary, in such form and manner and at such
15 time as the Secretary may require.

16 “(b) SECRETARY MAY COMPEL JOINT FARE STRUC-
17 TURE.—If the Secretary determines that it is necessary
18 in order to facilitate service to small communities, the Sec-
19 retary may require any air carrier to enter into a joint-
20 fare or interline agreement with any qualifying air carrier
21 that serves an under-served market to facilitate air trans-
22 portation.

23 “(c) APPLICATION LIMITED TO SERVICE TO COMMU-
24 NITIES RECEIVING DOT ASSISTANCE.—The Secretary
25 may not require an air carrier to enter into an agreement
26 under subsection (a) or (b) except to the extent deter-

1 mined by the Secretary to be necessary to the provision
 2 of air service to a community receiving financial assistance
 3 under section 41761. Nothing in this section provides au-
 4 thority for the Secretary to establish air fares for service
 5 to which this section applies.

6 “(d) DEFINITIONS.—For purposes of this section—

7 “(1) QUALIFYING AIR CARRIER.—The term
 8 ‘qualifying air carrier’ means an air carrier that op-
 9 erates pursuant to a certificate of public convenience
 10 and necessity under chapter 411 of this title.

11 “(2) UNDER-SERVED MARKET.—The term
 12 ‘under-served market’ means a commercial service
 13 airport that is a nonhub airport (as defined in sec-
 14 tion 41731(4) of this title), a small hub airport (as
 15 defined in section 41731(5) of this title), or an air-
 16 port that is smaller than a nonhub or small hub air-
 17 port.

18 “(3) ESSENTIAL AIRPORT FACILITY.—The term
 19 ‘essential airport facility’ means a hub airport (as
 20 defined in section 41731(a)(3) of this title).”.

21 (b) CLERICAL AMENDMENT.—The chapter analysis
 22 for chapter 417 of title 49, United States Code, is amend-
 23 ed by inserting after the item relating to section 41715
 24 the following:

“41716. Joint fares and interline agreements for domestic transportation.”.

1 **SEC. 9. REVITALIZATION OF AIR SERVICE TO RURAL**
2 **AREAS.**

3 Section 40101(a) of title 49, United States Code, is
4 amended by adding at the end thereof the following:

5 “(16) ensuring that consumers in all regions of
6 the United States, including those in small commu-
7 nities and rural and remote areas, have access to af-
8 fordable, regularly scheduled air service.

9 “(17) ensuring that any slots given to air car-
10 riers to provide small community air service are
11 withdrawn if the carrier fails to provide the serv-
12 ice.”.

13 **SEC. 10. MARKETING PRACTICES.**

14 Section 41712 of title 49, United States Code, is
15 amended by—

16 (1) inserting “(a) IN GENERAL.—” before
17 “On”; and

18 (2) adding at the end thereof the following:

19 “(b) MARKETING PRACTICES THAT ADVERSELY AF-
20 FECT SERVICE TO SMALL OR MEDIUM COMMUNITIES.—

21 Within 180 days after the date of enactment of the Air
22 Service Restoration Act, the Secretary shall review the
23 marketing practices of air carriers that may inhibit the
24 availability of quality, affordable air transportation serv-
25 ices to small and medium-sized communities, including—

1 “(1) marketing arrangements between airlines
2 and travel agents;
3 “(2) code-sharing partnerships;
4 “(3) computer reservation system displays;
5 “(4) gate arrangements at airports; and
6 “(5) any other marketing practice that may
7 have the same effect.

8 “(c) REGULATIONS.—If the Secretary finds, after
9 conducting the review required by subsection (b), that
10 marketing practices inhibit the availability of such service
11 to such communities, then, after public notice and an op-
12 portunity for a hearing, the Secretary shall promulgate
13 regulations that address the problem.”.

○